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2005 DEC 9 PM 3:44UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

ENVIR. APPEALS BOARD

IN THE MATTER OF:)

E. I. du Pont de Nemours
and Company)

Wilmington, DE)

Respondent)

Washington Works Facility)
Route 892 South DuPont Road)
Washington, Wood County, WV)

Docket No. TSCA-HQ-2004-0016

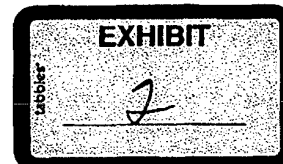
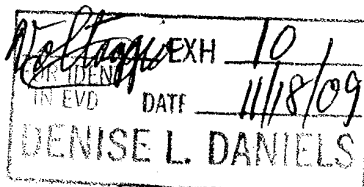
Docket No. RCRA-HQ-2004-0016

Docket No. TSCA-HQ-2005-5001

CONSENT AGREEMENT AND FINAL ORDER

1 Complainant, the United States Environmental Protection Agency ("EPA" or the
2 "Agency") and Respondent, E.I. du Pont de Nemours and Company ("DuPont") (referred to
3 collectively as "the parties") have agreed that settlement of this matter is in the public interest,
4 and that execution of this Consent Agreement and Final Order, without further litigation, is the
5 most appropriate means of resolving this matter;

6 Before the taking of any testimony, without further adjudication of any issue of fact or
7 law, and upon consent and agreement of the Parties, it is hereby Ordered and Adjudged as
8 follows:



1 **I. PRELIMINARY STATEMENT**

2 1. EPA initiated this proceeding for the assessment of civil penalties, pursuant to the
3 Toxic Substances Control Act ("TSCA"), 15 U.S.C. §§ 2601 et seq., and the Resource
4 Conservation and Recovery Act ("RCRA"), as amended by the Hazardous and Solid Waste
5 Amendments of 1984 ("HSWA"), 42 U.S.C. §§ 6901 et seq., and RCRA's implementing
6 regulations.

7 2. The parties are entering into this Consent Agreement to resolve the violations alleged
8 in the First Amended Complaint, incorporated by reference in its entirety into this document, and
9 the Second Complaint, also incorporated by reference in its entirety into this document, referred
10 jointly in this Consent Agreement as the "Consolidated Action." Respondent has entered into
11 this Consent Agreement in order to resolve this matter, to avoid unnecessary business disruption,
12 and to avoid the necessity of litigation. Nothing in this Consent Agreement should be taken as
13 an admission of liability by Respondent or an admission as to any issue of fact or law raised by
14 Complainant's allegations in the Consolidated Action unless specifically stated below.

15 3. In the Consolidated Action, Complainant alleges that on three separate occasions as
16 described in Counts I, II and IV of the First Amended Complaint and Second Complaint,
17 Respondent failed to comply with the requirements of TSCA §§ 8(e) and 15, 15 U.S.C.
18 §§ 2607(e) and 2614. As stated in its Answers to the First Amended Complaint and the Second
19 Complaint, which are incorporated in their entirety into this document, Respondent denies these
20 allegations.

21 4. The Complainant further alleges that, as described in Count III of the First Amended
22 Complaint, Respondent violated RCRA § 3005(a), 42 U.S.C. § 6925(a), 40 C.F.R. § 270.30(h),

1 and West Virginia Hazardous Waste Management Rule § 33-20-11.1, and Part I, Section I.7 of
2 the Corrective Action portion of DuPont's hazardous waste permit for the Washington Works
3 Facility located in Washington, West Virginia. As stated in its Answer to the First Amended
4 Complaint, which is incorporated by reference in its entirety into this document, Respondent
5 denies this allegation.

6 5. This Consent Agreement and Final Order shall apply to, and be binding upon,
7 Respondent, its officers, directors, employees, successors and assigns, including, but not limited
8 to, subsequent purchasers.

9 6. For the purpose of this proceeding, Respondent will not contest EPA's jurisdiction to
10 settle this action and to enter into this Consent Agreement and Final Order.

11 7. For the purpose of this proceeding, Respondent waives any right to contest the
12 allegations in either the Consolidated Action or this Consent Agreement and waives its right to
13 appeal or to seek judicial review of the Final Order accompanying this Consent Agreement.

14 8. Without admitting the factual or legal allegations contained in the Consolidated
15 Action, except as stated in Paragraphs 6 and 7, above, Respondent consents to the terms of this
16 Consent Agreement and Final Order.

17 **II. ADDITIONAL ALLEGED VIOLATIONS RESOLVED IN THIS**
18 **CONSENT AGREEMENT AND FINAL ORDER**
19

20 1. The parties agree to settlement of the following alleged violations before the filing of
21 a complaint, pursuant to TSCA § 16, 15 U.S.C. § 2615, and 40 C.F.R. § 22.13(b).

22 2. Respondent is alleged to have violated, on four separate occasions, TSCA §§ 8(e) and
23 15, 15 U.S.C. §§ 2607(e) and 2614, as further described in Paragraphs II.3. – II.9., below.

1 3. Complainant alleges the following to form the factual basis for Count V:

2 a. Sometime in 2002, a third party performed testing that would detect levels of
3 perfluorooctanoic acid (PFOA) in the blood serum of ten individuals living in West Virginia.
4 Because only one of these ten individuals reportedly had ever worked at DuPont's Washington
5 Works Plant, this exposure to PFOA is considered to be non-occupational.

6 b. At the time this community serum sampling was performed, these ten
7 individuals reportedly drank private well water located near one or more DuPont landfills at
8 which DuPont disposed ammonium perfluorooctanoate (APFO), also referred to by Complainant
9 as perfluorooctanoic acid (PFOA). The ten individuals also lived in the vicinity of DuPont's
10 Washington Works Plant in West Virginia.

11 c. DuPont represents to EPA that at no time before August 13, 2004, did DuPont,
12 including any of its officers, employees, contractors, and/or consultants, have knowledge of the
13 2002 blood serum sampling results for these non-occupational individuals.

14 d. On December 20, 2004, DuPont submitted to EPA the 2002 blood serum
15 sampling results for these non-occupational individuals.

16 4. Complainant alleges that Respondent should have immediately submitted the 2002
17 blood serum sampling results for the ten non-occupational individuals, discussed in Paragraph
18 II.3., above, when Respondent obtained this information.

19 5. The following general factual allegations are relevant to, and incorporated in,
20 Paragraphs II.6. – II.8., below:

1 a. In June 1991, EPA published the "TSCA Section 8(e) Reporting Guide" (1991
2 Reporting Guide), in which EPA provided reporting guidance for determining when to report
3 significant lethality observed in animal studies.

4 b. The 1991 Reporting Guide establishes specific numeric values that correspond
5 to the following three toxicity categories: extremely toxic, highly toxic, and moderately toxic.

6 6. Complainant alleges the following to form the factual basis for Count VI:

7 a. On or before July 11, 1997, DuPont performed an acute inhalation toxicity
8 study for a perfluorinated chemical substance, the identity of which has been claimed as TSCA
9 Confidential Business Information by DuPont.

10 b. This acute inhalation toxicity study was performed on male rats which were
11 exposed to the test substance in an aerosol form. The study results were compiled by DuPont in
12 an internal document described as Report No. HL-1997-00599.

13 c. On or before January 17, 2002, DuPont performed an acute inhalation toxicity
14 study on male rats using the same perfluorinated chemical substance in the same form and
15 exposure pathway as was used in the test described in subparagraph b, above, but at different
16 concentrations than were used in the 1997 study.

17 d. While DuPont submitted Report No. HL-1997-00599 to EPA on December 7,
18 2004, DuPont had reported the results of the 2002 acute toxicity study to EPA on January 22,
19 2002, which EPA designated as 8EHQ-0102-15057 in the TSCA §8(e) Docket.

20 7. Complainant alleges the following to form the factual basis for Count VII:

21 a. On or before July 11, 1997, DuPont performed an acute inhalation toxicity
22 study on a perfluorinated chemical substance, different from the chemical substance at issue in

1 Count VI, above, the identity of which has been claimed as TSCA Confidential Business
2 Information by DuPont.

3 b. This acute inhalation toxicity study was performed on male rats which were
4 exposed to the test substance in an aerosol form. The study results were compiled by DuPont in
5 an internal document described as Report No. HL-1997-00600.

6 c. DuPont submitted Report No. HL-1997-00600 to EPA on December 7, 2004.

7 8. Complainant alleges the following to form the factual basis for Count VIII:

8 a. On or before August 29, 1997, DuPont performed an acute inhalation toxicity
9 study on a perfluorinated chemical substance, different from the chemical substance at issue in
10 Counts VI and VII, above, the identity of which has been claimed as TSCA Confidential
11 Business Information by DuPont.

12 b. This acute inhalation toxicity study was performed on male rats which were
13 exposed to the test substance in an aerosol form. The study results were compiled by DuPont in
14 an internal document described as Report No. HL-1997-00598.

15 c. DuPont submitted Report No. HL-1997-00598 to EPA on December 7, 2004.

16 9. Under the 1991 Reporting Guide, where significant lethality occurs at a dose or
17 concentration comparable to an acute inhalation LC50 value of less than or equal to 0.5 mg/l,
18 which EPA equates to 500 mg/m³, the test substance is considered extremely toxic and the
19 results of the study must be immediately reported to EPA.

20 a. Complainant alleges that based upon the results of the study described in HL-
21 1997-00599 (which has been designated in EPA's TSCA § 8(e) Docket as 8EHQ-1207-15856
22 Supplement) discussed in Paragraph II.6., above, the test substance is extremely toxic under the

1 1991 Reporting Guide. Complainant alleges that Respondent should have immediately
2 submitted the results of this study to EPA under TSCA § 8(e) when DuPont obtained this
3 information.

4 b. Complainant alleges that based upon the results of the study described in HL-
5 1997-00600 (which has been designated in EPA's TSCA § 8(e) Docket as 8EHQ-1207-15856
6 Supplement) discussed in Paragraph II.7., above, the test substance is extremely toxic under the
7 1991 Reporting Guide. Complainant alleges that Respondent should have immediately
8 submitted the results of this study to EPA under TSCA § 8(e) when DuPont obtained this
9 information.

10 c. Complainant alleges that based upon the results of the study described in HL-
11 1997-00598 (which has been designated in EPA's TSCA § 8(e) Docket as 8EHQ-1207-15856
12 Supplement) discussed in Paragraph II.8., above, the test substance is extremely toxic under the
13 1991 Reporting Guide. Complainant alleges that Respondent should have immediately
14 submitted the results of this study to EPA under TSCA § 8(e) when DuPont obtained this
15 information.

16 10. For the purpose of this proceeding, Respondent will not contest EPA's jurisdiction to
17 settle this action and to enter into this Consent Agreement and Final Order.

18 11. For the purpose of this proceeding, Respondent neither admits nor denies the factual
19 allegations, and denies the legal allegations, stated in Paragraphs II.2. – II.9., above.

20 12. For the purpose of this proceeding, Respondent waives any right to contest these
21 additional alleged violations, and waives its right to appeal or to seek judicial review of the Final
22 Order accompanying this Consent Agreement.

1 **III. TERMS OF SETTLEMENT**

2 1. Pursuant to TSCA § 16 and RCRA § 3008, the nature, circumstances and extent of the
3 alleged violations, Respondent's agreement to perform Supplemental Environmental Projects
4 (SEPs) and other relevant factors, Respondent agrees to pay **ten million two hundred fifty**
5 **thousand dollars (\$10,250,000)** in accordance with the terms set forth below in order to settle
6 the allegations in the Consolidated Action and in Section II of this Consent Agreement.

7 2. Without admitting any liability, Respondent enters into this Consent Agreement and
8 consents for the purposes of settlement to ratification by the Environmental Appeals Board of the
9 attached Final Order requiring the payment of the civil penalty cited in Paragraph III.1., above,
10 and the performance of the SEPs in accordance with Section IV., below.

11 3. Not more than thirty (30) days following the effective date of the Final Order,
12 Respondent shall submit either a cashier's or certified check, payable to the order of the
13 "Treasurer, United States of America," in the amount of **ten million two hundred fifty**
14 **thousand dollars (\$ 10,250,000)**, to:

15 EPA-Washington
16 (Hearing Clerk)
17 Docket No. TSCA-HQ-2004-0016, RCRA-HQ-2004-0016,
18 TSCA-HQ-2005-5001
19 P.O. Box 360277
20 Pittsburgh, PA 15251-6277

21 or pay **ten million two hundred fifty thousand dollars (\$10,250,000)** by wire transfer with a
22 notation of "DuPont, Civil Penalty Docket Nos. TSCA-HQ-2004-0016, RCRA-HQ-2004-0016,
23 TSCA-HQ-2005-5001" by using the following instructions:

1 Name of Beneficiary: EPA
 2 Number of Account for deposit: 68010099
 3 The Bank Holding Acct: Treas_NYC
 4 The ABA routing Number: 021030004

5 4. Respondent shall provide, within fourteen (14) business days after making the
 6 payment required in Paragraph III.3., a copy of the check or wire transfer letter to:

7 Mr. Tony Ellis
 8 US EPA - Headquarters (2245A)
 9 Office of Civil Enforcement
 10 1200 Pennsylvania Ave. N.W.
 11 Washington, DC 20460

12 The check or wire transfer shall bear the case docket number. Interest and late charges shall be
 13 assessed as specified in Paragraph IX.2.

14 5. The amount specified in Paragraph III.3., above, represents civil penalties assessed by
 15 EPA and shall not be deductible by DuPont for purposes of Federal taxes.

16 IV. SUPPLEMENTAL ENVIRONMENTAL PROJECTS

17 1. Respondent shall implement the two SEPs described in detail in Appendices A and B
 18 to this Consent Agreement, which have been approved by EPA and are attached hereto and
 19 incorporated into this Consent Agreement by reference. Respondent shall implement the two
 20 SEPs in accordance with the respective provisions set forth in Appendices A and B. Appendix A
 21 is entitled Fluorotelomer-based Product Biodegradation Testing. The total cost of this SEP
 22 (referred herein as "SEP A") is set at five million dollars (\$5,000,000). Appendix B is entitled
 23 Microscale Chemistry and Green Chemistry For Junior High Schools and High Schools in Wood

1 County, West Virginia. The total cost of this SEP (referred herein as "SEP B") is set at one
2 million two hundred fifty thousand dollars (\$1,250,000).

3 2. SEP Completion: Both SEPs shall be completed within the timeframes established in
4 Appendices A and B. Therefore, SEP A is to be completed within the timeframe specified in, or
5 extended in accordance with, Appendix A. SEP B is to be completed within the timeframe
6 specified in, or extended in accordance with, Appendix B.

7 3. In implementing the SEPs, Respondent shall incur eligible costs of not less than, and
8 Respondent shall not be required to incur eligible costs in excess of, the amount indicated in
9 Paragraph IV.1., above, for each SEP. Eligible SEP costs include the costs of planning and
10 implementing the SEPs but do not include attorneys fees, the costs of employees performing
11 functions that are part of their regular duties, certain potential additional management costs
12 related to implementation of SEP B, as agreed to by the parties, and costs, if any, expressly
13 specified in the applicable Appendices A and B as not eligible.

14 4. Respondent is responsible for the satisfactory completion of the SEPs in accordance
15 with the requirements of this Consent Agreement, its Appendices and attachments. *"Satisfactory
16 completion" or "satisfactorily completed" means that Respondent shall expend not less than the
17 amount indicated for that SEP in Paragraph IV.1., above, on SEP activities described in
18 Appendix A or B respectively and performed in accordance with the applicable Appendix A or B
19 respectively.* Although Respondent may use contractors or consultants in planning and
20 implementing a SEP, Respondent always remains responsible for the satisfactory completion of
21 the SEP. In performing activities under any of the SEPs, Respondent shall not be required to
22 incur eligible costs in excess of the amount indicated for that SEP in Paragraph IV.1., above.

1 5. With regard to each of the SEPs, Respondent certifies the truth and accuracy of each
2 of the following:

3 a. that, as of the date of executing this Consent Agreement, all cost information
4 provided to EPA in connection with EPA's approval of each SEP is complete and
5 accurate and represents a fair estimate of the costs necessary to implement the
6 SEPs;

7 b. that, as of the date of executing this Consent Agreement, Respondent is not
8 required to perform or develop any of the SEPs by any federal, state, international
9 or local law or regulation and is not required to perform or develop any of the
10 SEPs by agreement, grant, or as injunctive relief awarded in any other action in
11 any forum;

12 c. that, as of the date of executing this Consent Agreement, each SEP is not a project
13 that Respondent was planning or intending to perform or implement other than in
14 settlement of the claims resolved in this Consent Agreement;

15 d. that, as of the date of executing this Consent Agreement, Respondent has not
16 received, and is not negotiating to receive, credit for any of the SEPs in any other
17 enforcement action; and

18 e. that Respondent will not receive any reimbursement for any portion of any SEP.

19 6. SEP Completion Report: Not later than sixty (60) days after the date set for
20 completion of each SEP, or after Respondent has expended the amount indicated for that SEP in
21 Paragraph IV.1., above, on activities under the SEP, Respondent shall submit a SEP Completion

1 Report to the person indicated in Paragraph V.1. The SEP Completion Report shall contain the
2 following information:

- 3 a. a detailed description of the SEP as implemented;
- 4 b. a description of any problems encountered in completing the SEP and the
5 solutions thereto;
- 6 c. an itemized list of all eligible SEP costs;
- 7 d. certification that either the SEP has been fully implemented pursuant to
8 the provisions of this Consent Agreement and the applicable Appendix or
9 that Respondent has expended the amount indicated for that SEP in
10 Paragraph IV.1., above, in a good faith effort on activities under the SEP;
11 and
- 12 e. a description of the environmental and public health benefits resulting
13 from implementation of the SEP (with a quantification of the benefits, if
14 feasible).

15 7. EPA may, in its sole discretion, require any information in addition to that described
16 in the preceding Paragraph that is reasonably necessary in order to determine the adequacy of
17 each SEP completion or eligibility of SEP costs, and Respondent shall provide such information
18 within thirty (30) days, unless the parties agree that additional time is necessary to provide the
19 information.

20 8. Within sixty (60) days after receiving a SEP Completion Report, or if EPA does not
21 receive a SEP Completion Report, within sixty (60) days after the date set for completion of the
22 SEP or after Respondent has notified EPA that it has expended the amount indicated for that SEP

1 in Paragraph IV.1., above, on activities under the SEP, EPA shall notify Respondent whether or
2 not Respondent has satisfactorily completed that SEP. If EPA notifies Respondent that a SEP is
3 not satisfactorily completed, Respondent shall have ten (10) business days following receipt of
4 such notice to object to the Agency's determination. Respondent's objection must be in writing
5 and submitted to the person in Paragraph V.1. EPA and Respondent shall have an additional
6 thirty (30) days from the receipt by EPA of Respondent's objection to reach agreement on
7 changes necessary to the SEP, during which period Respondent shall not be deemed to be in
8 violation of this Consent Agreement. If the Parties cannot reach agreement on any such issue
9 within this thirty (30) day period, EPA shall provide a written statement of its decision to
10 Respondent, which decision shall be final. If the SEP has not been satisfactorily completed,
11 stipulated penalties may be assessed under Section VII. of this Consent Agreement. If
12 Respondent has satisfactorily completed all SEP activities described in the relevant Appendix
13 but the amount expended on performance of the SEP is less than the amount indicated for that
14 SEP in Paragraph IV.1., above, then negotiations shall occur as provided under Section VI. of
15 this Consent Agreement.

16 9. Each submission required under this Section shall be signed by an official with
17 knowledge of the SEP and shall bear the certification language set forth in Paragraph V.4.,
18 below.

19 10. Any public statement, oral or written, in print, film, or other media, made by
20 Respondent making reference to the SEPs under this Consent Agreement shall include the
21 following language: "This project was undertaken in connection with the settlement of an

1 enforcement action taken by the U.S. Environmental Protection Agency under the Toxic
2 Substances Control Act and the Resource Conservation and Recovery Act.”

3 **V. REPORTING REQUIREMENTS**

4 1. Respondent shall submit the following reports:

5 a. Within thirty (30) days after the end of each calendar-year quarter (*i.e.*, by April 30,
6 July 31, October 30, and January 30) after execution of this Consent Agreement, until
7 termination of this Consent Agreement pursuant to Paragraph IX.9., Respondent shall submit in
8 writing to:

9 Mr. Tony Ellis
10 US EPA - Headquarters (2245A)
11 Office of Civil Enforcement
12 1200 Pennsylvania Ave., N.W.
13 Washington, DC 20460*
14 Phone: 202-564-4167
15 Fax: 202-564-0035
16 Email: ellis.tony@epa.gov
17 (*Note: Above is for US Postal Service,
18 courier deliveries use zip code 20004.)

19 a quarterly report for the preceding quarter that shall include a discussion of Respondent's
20 progress in satisfying its obligations in connection with each SEP including, at a minimum, a
21 narrative description of activities undertaken, compliance with the schedules or milestones set
22 forth in the applicable Appendix, and a summary of costs incurred since the previous report.

23 b. If Respondent violates, or has reason to believe that it probably will violate, any
24 requirement of this Consent Agreement, including its Appendices, Respondent shall notify EPA
25 of such violation and its likely duration, in writing, within ten (10) business days of the day
26 Respondent first becomes aware of the violation, with an explanation of the violation's likely
27 cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If

1 the cause of a violation cannot be fully explained at the time the report is due, Respondent shall
2 so state in the report. Respondent shall investigate the cause of the violation and shall then
3 submit an amendment to the report, including a full explanation of the cause of the violation,
4 within thirty (30) days of the day Respondent becomes aware of the cause of the violation.
5 During this thirty (30) day period Respondent shall not be deemed to be in violation of this
6 Consent Agreement. Failure by Respondent to comply with the notice requirements of this
7 Paragraph shall render this Paragraph void and of no effect as to the particular incident involved
8 and constitute a waiver of the Respondent's right to request an extension of its obligation under
9 this Consent Agreement based on such incident. Nothing in this Paragraph or the following
10 Paragraph relieves Respondent of its obligation to provide the notice required by Paragraph IX.5.
11 of this Consent Agreement (Force Majeure).

12 2. Whenever any violation of this Consent Agreement or any other event affecting
13 Respondent's performance under this Consent Agreement may pose an immediate threat to the
14 public health or welfare or the environment, Respondent shall notify EPA orally or by electronic
15 or facsimile transmission as soon as possible, but no later than twenty-four (24) hours after
16 Respondent first knew of, or should have known of, the violation or event. This procedure is in
17 addition to the requirements set forth in the preceding Paragraph.

18 3. All reports and notices required under this Consent Agreement or its
19 Appendices shall be submitted to the person designated in Paragraph V.1.a. of this Consent
20 Agreement.

1 4. Each report submitted by Respondent under this Section, each final report as defined
2 in the applicable SEP, and each SEP Completion Report shall be signed by an official of the
3 submitting party and include the following certification:

4 I certify under penalty of law that I have examined and am familiar
5 with the information submitted in this document and all attach-
6 ments and that this document and its attachments were prepared
7 either by me personally or under my direction or supervision in a
8 manner designed to ensure that qualified and knowledgeable
9 personnel properly gather and present the information contained
10 therein. I further certify, based on my personal knowledge or on
11 my inquiry of those individuals immediately responsible for
12 obtaining the information, that the information is true, accurate and
13 complete. I am aware that there are significant penalties for
14 submitting false information, including the possibility of fines and
15 imprisonment for knowingly and willfully submitting a materially
16 false statement.

17 This certification requirement does not apply to emergency or similar notifications where
18 compliance would be impractical.

19 5. Respondent agrees that EPA may at reasonable times and in a reasonable manner
20 inspect the locations of ongoing SEP activities at facilities owned by Respondent or owned or
21 operated by any contractor or sub-contractor of Respondent who conducts SEP activities and
22 observe the staff performance at any such location in order to confirm that each of the SEPs is
23 being undertaken in conformity with the representations made herein. Respondent shall cause to
24 be included in any contract or sub-contract for the conduct of SEP activities a provision
25 requiring access for EPA inspection in accordance herewith.

26 6. Respondent shall maintain for a period of five (5) years after termination of this
27 Consent Agreement legible copies of documentation of the underlying research and data for any
28 and all documents or reports submitted to EPA pursuant to this Consent Agreement or its

1 Appendices and shall provide the documentation of any such underlying research and data to
2 EPA not more than thirty (30) days after a request for such information, unless otherwise stated
3 in an Appendix.

4 7. The reporting requirements of this Consent Agreement do not relieve Respondent of
5 any reporting obligations required by any federal, state, or local law, regulation, permit, or other
6 requirement.

7 8. Any information provided pursuant to this Consent Agreement may be used by the
8 United States in any proceeding to enforce the provisions of this Consent Agreement and as
9 otherwise permitted by law.

10 9. All SEP Completion Reports required under Paragraph IV.6., quarterly reports
11 required in Paragraph V.1.a., and final reports as defined in the applicable SEP, shall be provided
12 to EPA in a version that is immediately available for public review. Confidential Business
13 Information (CBI), if any, shall be redacted by Respondent and a statement inserted for each
14 redacted item in the public version that Respondent declares that information CBI. A CBI
15 version of the report will be sent simultaneously with the public version.

16 **VI. EXPENDITURES LESS THAN AGREED SEP MINIMUMS**

17 1. If all activities under a SEP are satisfactorily completed, but Respondent expends less
18 than the total amount agreed upon for the SEP, the parties shall either:

19 a) negotiate additional SEPs or

20 b) negotiate to redirect the remaining money to a SEP already agreed to as part of this

21 Consent Agreement

22 to adjust for the balance of the unexpended funds.

1 2. If the parties cannot agree to additional SEPs and cannot agree to redirect the money
2 to a SEP already agreed to under this Consent Agreement, then Respondent shall be considered
3 to have not satisfactorily completed the SEP even though all work is satisfactorily performed.

4 **VII. STIPULATED PENALTIES**

5 1. If a SEP is not satisfactorily completed only because Respondent expends less than
6 the total amount agreed upon for the SEP and the parties did not agree under Paragraph VI.2. to
7 direct the money to an additional SEP or redirect the money to an existing SEP already agreed to
8 under this Consent Agreement, Respondent shall pay a stipulated penalty equal to the difference
9 between the amount of eligible SEP costs incurred by the Respondent and the applicable amount
10 set forth in Paragraph IV.3.

11 2. If Respondent represents it has satisfactorily completed a SEP, but EPA notifies
12 Respondent under Paragraph IV.8. that the SEP has not been satisfactorily completed for reasons
13 other than, or in addition to, those set forth in Paragraph VII.1, Respondent shall pay a stipulated
14 penalty equal to the amount of the SEP as specified in Paragraph IV.1., which penalty shall be in
15 addition to any penalty required in Paragraph VII.1., above.

16 3. If Respondent ceases work on a SEP prior to its completion and EPA notifies
17 Respondent under Paragraph IV.8. that the SEP has not been satisfactorily completed because
18 the cessation is contrary to the provisions of the SEP or of this Consent Agreement, Respondent
19 shall pay a stipulated penalty equal to the amount of the SEP as specified in Paragraph IV.1., and
20 any penalties owing under Paragraph VII.4., below, as of the day Respondent ceased work.

4. If Respondent fails to comply with the terms of this Consent Agreement or its Appendices and the failure is not excused under the provisions of this Consent Agreement or its Appendices, Respondent shall pay stipulated penalties as follows:

Violation	Stipulated Penalty
a. Failure to pay the civil penalty specified in Paragraph III.3. above.	\$5,000 per day
b. Failure to timely submit, modify, or implement, as approved, reports (including SEP Completion Reports), studies, analyses, protocols, or other submittals required in this Consent Agreement or its Appendices.	\$1,000 per day per violation during the first thirty (30) days, \$2,500 per day per violation thereafter
c. Any other violation of this Consent Agreement or its Appendices.	\$1,000 per day per violation

5. All stipulated penalties shall begin to accrue on the day after the performance is due or on the day a violation occurs, whichever is applicable, and shall continue until performance is satisfactorily completed or until the violation ceases, whichever is applicable. Nothing in this Consent Agreement shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this Consent Agreement.

6. EPA may, in its unreviewable discretion, waive payment of any portion of stipulated penalties that may accrue under this Consent Agreement.

7. All stipulated penalties are due and owing, upon written demand by EPA, no later than sixty (60) days after Respondent receives such demand.

8. All stipulated penalties shall be paid in a manner set forth in Paragraph III.3.

9. In any action concerning EPA's assessment of a stipulated penalty under this Consent Agreement, EPA shall be entitled to judgment for the claimed penalty amount unless Respondent

1 demonstrates, and the court finds, that EPA acted arbitrarily or capriciously in its determining
2 that stipulated penalties should be assessed against Respondent.

3 **VIII. EPA ACCEPTANCE OF SEP COMPLETION REPORT**

4 1. Within sixty (60) days after receipt of each SEP Completion Report described in
5 Section V.1., above, EPA shall notify the Respondent, in writing, that: a) the SEP Completion
6 Report does not comply with Paragraph IV.6. in which case Respondent shall have an
7 opportunity in accordance with Paragraph VIII.2., unless the parties agree to additional time, for
8 Respondent to correct the deficiencies; or b) the SEP Completion Report complies with
9 Paragraph IV.6. and the project has been completed satisfactorily; or c) the SEP Completion
10 Report complies with Paragraph IV.6. but the SEP has not been satisfactorily completed and
11 stipulated penalties may be assessed. Before EPA assesses stipulated penalties, Respondent may
12 invoke the procedure in Paragraph IV.8.

13 2. If EPA notifies Respondent that a SEP Completion Report does not comply with
14 Paragraph IV.6 but EPA has not yet made a final determination about whether that particular
15 SEP has been satisfactorily completed, Respondent shall have ten (10) business days following
16 receipt of such notice to object to the Agency's determination. Respondent's objection must be
17 in writing and submitted to the person in Paragraph V.1. EPA and Respondent shall have an
18 additional thirty (30) days from the receipt by EPA of Respondent's objection to reach
19 agreement on changes necessary to the SEP Completion Report. If agreement cannot be reached
20 on any such issue within this thirty (30) day period, EPA shall provide a written statement of its
21 decision to Respondent, which decision shall be final and binding upon Respondent.

1 3. In the event the SEP Completion Report does not comply with Paragraph IV.6. and
2 the parties have completed the procedure in Paragraphs VIII.1. and VIII.2., EPA may assess
3 stipulated penalties against Respondent in accordance with Paragraph VII.4.b.

4 **IX. OTHER MATTERS**

5 1. Respondent may request, and EPA may grant, an extension of time for any action
6 required of Respondent under this Consent Agreement.

7 2. Payment Provisions: Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest
8 and penalties on debts owed to the United States and a charge to cover the cost of processing and
9 handling a delinquent claim. Interest will therefore begin to accrue on a civil or stipulated
10 penalty if it is not paid by the last date required. Interest will be assessed at the rate of the
11 United States Treasury tax and loan rate in accordance with 4 C.F.R. § 102.13(c). A charge will
12 be assessed to cover the costs of debt collection, including processing and handling costs and
13 attorneys fees. In addition, a non-payment penalty charge of six (6) percent per year
14 compounded annually will be assessed on any portion of the debt which remains delinquent
15 more than ninety (90) days after payment is due. Any such non-payment penalty charge on the
16 debt will accrue from the date the penalty payment becomes due and is not paid. 4 C.F.R. §§
17 102.13(d) and (e).

18 3. Nothing in this agreement shall be construed as prohibiting, altering or in any way
19 limiting the ability of EPA to seek any other monetary or non-monetary remedies or sanctions to
20 which EPA is legally entitled, including but not limited to injunctive relief or an action to collect
21 stipulated penalties, for Respondent's violation of: 1) any provision of law not resolved by the
22 settlement of claims for civil penalties pursuant to TSCA and RCRA as alleged in the

1 Consolidated Action and the violations alleged in Section II, above, or 2) any applicable
2 requirement under this Consent Agreement or its Appendices except that EPA will not seek to
3 compel performance of a requirement in Appendices A or B.

4 4. This Consent Agreement and Final Order shall not relieve Respondent of its
5 obligation to comply with all applicable provisions of federal, state or local law, nor shall it be
6 construed to be a ruling on, or determination of, any issue related to any federal, state or local
7 permit.

8 5. Force Majeure:

9 a. If any event occurs which causes or may cause delays in complying with this
10 Consent Agreement or its Appendices, Respondent shall notify Complainant in writing not more
11 than ten (10) days after the delay or Respondent's knowledge of the anticipated delay, whichever
12 is earlier, to the person in Paragraph V.1.a., above. The notice shall describe in detail the
13 anticipated length of the delay, the precise cause or causes of the delay, the measures taken and
14 to be taken by Respondent to prevent or minimize the delay, and the timetable by which those
15 measures will be implemented. The Respondent shall adopt all reasonable measures to avoid or
16 minimize any such delay. Failure by Respondent to comply with the notice requirements of this
17 Paragraph shall render this Paragraph void and of no effect as to the particular incident involved
18 and constitute a waiver of the Respondent's right to request an extension of its obligation under
19 this Consent Agreement or its Appendices based on such incident.

20 b. If the parties agree that the delay or anticipated delay in complying with this
21 Consent Agreement or its Appendices has been or will be caused by circumstances entirely
22 beyond the control of Respondent, the time for performance hereunder may be extended for a

1 period no longer than the delay resulting from such circumstances. In such event, the parties
2 shall agree to such extension of time, during which period Respondent shall not be deemed to be
3 in violation of this Consent Agreement or its Appendices.

4 c. In the event that EPA does not agree that a delay in complying with this
5 Consent Agreement or its Appendices has been or will be caused by circumstances beyond the
6 control of the Respondent, EPA will notify Respondent in writing of its decision and any delays
7 in the completion of the affected SEP shall not be excused.

8 d. The burden of proving that any delay is caused by circumstances entirely
9 beyond the control of the Respondent shall rest with the Respondent. Increased costs or
10 expenses associated with the implementation of actions called for by this Consent Agreement
11 shall not, in any event, be a basis for changes in this Consent Agreement or extensions of time
12 under section (b) of this Paragraph. Delay in achievement of one interim step shall not
13 necessarily justify or excuse delay in achievement of subsequent steps; it is Respondent's burden
14 to establish that a delay in achievement of one interim step justifies or excuses delay in
15 achievement of subsequent steps.

16 6. For purposes of Federal taxes, Respondent indicates that it does not intend to deduct
17 funds expended in the performance of the SEPs from the company's income except to the extent
18 and in the event that such costs exceed six million two hundred fifty thousand dollars,
19 (\$6,250,000).

20 7. This Consent Agreement and Final Order constitutes a final settlement by EPA of the
21 claims for civil penalties pursuant to TSCA and RCRA as alleged in the Consolidated Action
22 and in Section II, above. EPA covenants not to sue Respondent in any forum for civil penalties

1 pursuant to TSCA or RCRA for any allegations in the Consolidated Action or in Section II,
2 above. Nothing in this Consent Agreement and Final Order is intended to, nor shall be construed
3 to operate in any way, to resolve any criminal liability of the Respondent. Except for the claims
4 settled in this Consent Agreement and Final Order, compliance with this Consent Agreement and
5 Final Order shall not be a defense to any actions subsequently commenced pursuant to Federal
6 laws and regulations administered by EPA, and it is the responsibility of Respondent to comply
7 with such laws and regulations.

8 8. Each undersigned representative of the parties to this Consent Agreement certifies
9 that he or she is fully authorized by the party represented to enter into the terms and conditions
10 of this Consent Agreement and to execute and legally bind that party to it.

11 9. Respondent's obligations under this Consent Agreement and its Appendices shall
12 terminate upon Respondent:

- 13 a) paying the civil penalty specified in Paragraph III.3., above, and either
14 b) satisfactorily completing all SEPs and paying any stipulated penalty due under
15 Paragraph VII.4. or,
16 c) paying stipulated penalties under Paragraphs VII.1-3.

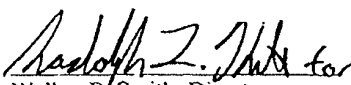
17 Within thirty (30) days of termination of Respondent's obligations of this Consent Agreement
18 and its Appendices in accordance with this Paragraph, the parties shall file a notice of
19 termination thereof with the Headquarters Hearing Clerk.

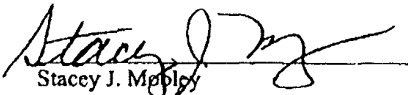
20 10. The effect of settlement described in Section IX.7., of this Consent Agreement and
21 Final Order is conditional upon the accuracy of the Respondent's representations to EPA that
22 EPA relied upon in settling this matter.

1 11. Each party shall bear its own costs and attorneys fees in connection with the action
 2 resolved by this Consent Agreement and Final Order.

3 For Complainant:

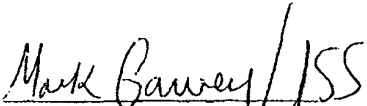
For Respondent:

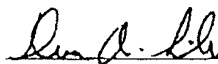
4
 5 
 6 Walker B. Smith, Director
 7 Office of Civil Enforcement
 8 U.S. Environmental Protection


 Stacey J. Meeley
 Sr. Vice President and General Counsel
 E. I. du Pont de Nemours and Company

9 Date: Nov. 23, 2005

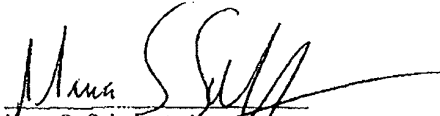
Date: 23 November 2005

10 
 11 Mark Garvey, Attorney
 12 Toxics and Pesticides Enforcement Division
 13 Office of Civil Enforcement
 14 Counsel for EPA


 Peter D. Robertson
 Duane A. Siler
 Patton Boggs L.L.P.
 Counsel for DuPont

15 Date: 11/23/05

Date: 11/23/05

16 
 17 Ilana S. Saltzbar, Attorney
 18 Toxics and Pesticides Enforcement Division
 19 Office of Civil Enforcement
 20 Counsel for EPA

21 Date: 11/23/05

**BEFORE THE ADMINISTRATOR
UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

IN THE MATTER OF:)

E. I. du Pont de Nemours)
and Company)

Wilmington, DE)

Respondent)

Washington Works Facility)
Route 892 South DuPont Road)
Washington, Wood County, WV)

Docket No. TSCA-HQ-2004-0016

Docket No. RCRA-HQ-2004-0016

Docket No. TSCA-HQ-2005-5001

FINAL ORDER

Pursuant to Section 16 of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §§ 2601 et seq., and Section 3008 of the Resource Conservation and Recovery Act ("RCRA"), as amended by the Hazardous and Solid Waste Amendments ("HSWA"), 42 U.S.C. §§ 6901 et seq., it is hereby ORDERED THAT:

1. Respondent shall comply with all of the terms of the Consent Agreement, incorporated herein by reference, including the terms of the Consent Agreement relating to performance of the SEPs attached to and incorporated in the Consent Agreement;

2. Nothing in the Consent Agreement relieves Respondent from complying with the requirements set forth in TSCA and RCRA and the regulations thereunder;

3. Respondent is assessed a civil penalty in the sum of **(Ten Million Two Hundred Fifty Thousand Dollars (\$10,250,000))**;

4. Respondent shall, within thirty (30) days of the effective date of this Order, forward a certified or cashier's check, payable to the order of the "Treasurer of the United States of America", in the amount of **\$ 10,250,000** to:

EPA-Washington

(Hearing Clerk)

Docket No. TSCA-HQ-2004-0016, RCRA-HQ-2004-0016,
TSCA-HQ-2005-5001

P.O. Box 360277

Pittsburgh, PA 15251-6277

1 or an electronic payment of \$ 10,250,000 by wire transfer as instructed in this agreement.
2 The check or wire transfer shall bear the notation "DuPont, Civil Penalty Docket Nos. TSCA-
3 HQ-2004-0016, RCRA-HQ-2004-0016, TSCA-HQ-2005-5001."

4 5. Failure to remit the civil penalty in Paragraph 3, above, in accordance with this Order
5 will constitute a breach of this Order and will cause Respondent to become subject to the
6 stipulated penalty of five thousand dollars (\$5,000) per diem immediately, plus interest as
7 allowed by law, and without further proceedings.

8 IT IS SO ORDERED.
9

10 Environmental Appeals Board
11

12 Date _____
13
14
15

Environmental Appeals Judge
U.S. Environmental Protection Agency